



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,697	03/09/2004	Benoit Abribat	U 0164-F04A	2889
23657	7590	05/21/2010	EXAMINER	
FOX ROTHSCHILD LLP 997 Lenox Drive, Bldg. #3 Lawrenceville, NJ 08648		PRYOR, ALTON NATHANIEL		
		ART UNIT		PAPER NUMBER
		1616		
		NOTIFICATION DATE		DELIVERY MODE
		05/21/2010		ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[ipdocket@foxrothschild.com](mailto:ipdocket@foxrothschild.com)

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/796,697	ABRIBAT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ALTON N. PRYOR	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 February 2010.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 26,28-30,32-34,36,37 and 39-43 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 26,28-30,32-34,36,37 and 39-43 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

Applicant's arguments, see paper, filed 2/15/10, with respect to Capuzzi et al. and Foerster et al. have been fully considered and are persuasive. Capuzzi et al. and Foerster et al. have been withdrawn from the rejection on record.

Applicant's arguments 2/15/10 have been fully considered but they are not persuasive over Auda et al. used in the 103 rejection of record. See discussion below. Previous rejections not addressed below have been withdrawn.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26,28-30,32-34,36,37,39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auda et al (US 6586366). Auda et al. teach oil based emulsifiable concentrates and agrochemical formulations comprising at least one oil component such as a fatty acid ester (column 1 line 50- column 2 line 12), at least one saccharide surfactant such as polyglycoside (hydrophilic emulsifier), and at least one other nonionic surfactant (column 1, lines 9-15, column 7 lines 10-20) such as EO sorbitan monolaurate (lipophilic emulsifier). The agrochemical in the composition can be glyphosate (column 6 lines 43-57). When the composition contains water, it will form a microemulsion (lines 43-49). The oil component may be a mineral or vegetable oil, or a fatty acid ester such as methyl or ethyl laurate (lines 50-65). The saccharide surfactant

Art Unit: 1616

may be an alkyl polyglucoside (column 2 lines 52-53). Other components may include antifoaming agents (column 3, line 35) and agrochemical agents such as herbicides, pesticides, insecticides, fungicides, or acaricides (lines 60-63), such as the herbicide glyphosate (column 5-6). Auda et al. teach a method of treating plants with adjuvant composition for the purpose of controlling pests. Auda et al. do not exemplify a combination of an oil component, at least one saccharide surfactant such as polyglycoside (hydrophilic emulsifier), and at least one other nonionic surfactant such as EO sorbitan monolaurate (lipophilic emulsifier) to form a microemulsion upon the addition of water. However, one of ordinary skill in the art would be motivated to combine these components because they disclose the same adjuvant materials as having utility in making microemulsion agrochemical compositions wherein the composition can be applied to plants to control pests.

Thus it would have been *prima facie* obvious to the ordinary artisan at the time the invention was made to have combined applicants' oil, hydrophilic emulsifier, lipophilic co-emulsifier and customary additives into a single microemulsion composition because the prior art teaches that these components, and specific examples thereof as claimed herein, were known to be combinable in a single composition in order to produce a microemulsion composition which was useful for combining with agrochemicals. It is well within the skill of the artisan to determine the optimal amount of each ingredient. One would have been motivated to do this in order to develop an agrochemical composition that would have been most effective in plant treatment without destroying the desired plant.

Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auda et al. as applied to claims 26,28-30,32-34,36,37,39-41 above, and further in view of SU 450563; 4/18/75, Tang (CN 1052302; 11/28/89) or Okada (JP 04046104; 2/17/92). Auda et al. teach all that is recited in claims 42 and 43 except for the composition comprising an citric acid and inorganic salt or organic acid. However, SU '563 or Tang or Okada teaches that the combination of citric acid along with sodium sulphate (inorganic salt), titanium salt (inorganic salt) and organic acid, respectively, promote plant growth. An artisan in the field would have been motivated to combine the teachings of Auda et al. and SU '563, Tang or Okada. One would have been motivated to do this because the addition of citric acid and inorganic salt or organic acid to Auda et al. would have been expected to enhance plant growth.

*Response to Applicants argument*

Applicants argue the Auda et al. is improper prior art according to the publication date. The Examiner argues that Auda et al. reference is used because of its filing of 05/17/96 which is before the instant Application's filing date of 03/09/04 and even prior to the related provisional application's filing date of 03/11/03.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 26,28-30,32-34,36,37,39-43 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s)

contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase "at least one" used in the claims appears to be new matter (see specifically claims 26,42). The phrase "and mixtures thereof" appears to be new matter (see claim 43).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/  
Primary Examiner, Art Unit 1616